United States District Court Southern District of Texas

ENTERED

August 05, 2024 Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

PCS SOFTWARE, INC,

Plaintiff,
v.

CIVIL ACTION NO. H-23-108

BUSPATCH SERVICES, INC.,

Defendant.

Defendant.

ORDER

In March 2024, the court held a pre-motion conference to hear the parties' arguments on whether Dispatch Services, Inc. may present expert testimony on the meaning of the phrase "initial use" in the parties' "software as a service" agreement. (Docket Entry No. 41). At the court's request, the parties provided supplemental authority. Dispatch's authority supported its position that its designated expert, Mr. Gehse, could testify as to the technical meaning of certain contract terms within the industry. (Docket Entry No. 42). Based on that supplemental authority, and the court's finding that "initial use" may have a specialized technical meaning in the software industry, the court concludes that the testimony should be allowed. *See Hess Corp. v. Schlumberger Tech. Corp.*, 26 F.4th 229 (5th Cir. 2022); *Philips Oil Co. v. OKC Corp.*, 812 F.2d 265 (5th Cir. 1987); *Musket Corp. v. Suncor Energy (USA) Marketing, Inc.*, 2016 WL 7374225, at *3 (S.D. Tex. 2016). PCS Software, Inc.'s request to strike Mr. Gehse's expert opinion is overruled.

SIGNED on August 5, 2024, at Houston, Texas.

Lee H. Rosenthal United States District Judge